IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12553 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VAJUBHAI DHANRAJBHAI GADHVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12553 of 1993

MR MA KHARADI for Petitioner.

Mr. LR Poojari, AGP for Respondent No. 1-3

NOTICE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 07/04/2004

ORAL JUDGEMENT

The petitioner by way of this Special Civil Application under Article 227 of the Constitution of India has challenged the orders passed by the learned Special Secretary (Appeals) in dismissing the revision

application confirming the order passed by the Collector,Surat as well as the Assistant Collector, Olpad Prant, Surat in cancelling the mutation Entry No. 1193.

2. That the petitioner became owner of land bearing Block No. 127 situated at Mandvi town and an entry to that effect was made on 6.4.1989 being mutation entry No. 1179 and the said entry was also certified on 9.5.1989. That as he was holding the land he purchased the land bearing Block No. 123 from respondent No.4 through a registered Sale Deed and an entry to that effect was also recorded in the Record of Rights by mutation entry No. 1193 dated 1.10.1989.

3. That the Assistant Collector, Olpad Prant, Surat by exercising the suo motu powers under Rule 108(6) of the Bombay Land Revenue Rules taken the mutation Entry No. 1193 dated 1.10.1989 under suo motu review alleging inter alia that the land which was sold by respondent No.4 to the petitioner was with a view to defeat the provisions of the Agricultural Land Ceiling Act and the land in question was declared as excess vacant land by A.L.T., Choryasi Prant by his judgment and order dated 30.7.1992 and as the land bearing Block No. 127 was transferred in favour of the petitioner by way of Will there was a breach of Section 63 of the Bombay Tenancy Act and therefore on the aforesaid grounds the Assistant Collector, Olpad Prant took the aforesaid entry under suo motu review. That the Assistant Collector, Olpad Prant by his judgment and order dated 9.6.1992 set aside the mutation entry No. 1193 dated 1.11.1989 with regard to Block No. 123 situated at Village Vareth, Taluka Mandvi by holding that there is a breach of Agricultural Lands Ceiling Act and the petitioner purchaser is not an agriculturist and therefore there is a breach of Section 2 (6) and Section 63 of the Bombay Tenancy Act and for which proceedings under Section 84(c) of the Bombay Tenancy Act are required to be initiated.

4. That being aggrieved and dissatisfied with the judgment and order dated 9.6.1992 passed by the Assistant Collector, Olpad Prant, Surat in R.T.S. Revision No. 19 of 1992 in setting aside the revenue Entry No. 1193 dated 1.11.1989 with regard to Block No. 123 situated at Village Vareth, Taluka Mandvi, the petitioner preferred R.T.S. Appeal before the Collector, Surat which was numbered as R.T.S. Appeal No. 145 of 1992. The Collector,Surat by his judgment and order dated 27.11.1992 dismissed the said appeal confirming the order passed by the Assistant Collector, Olpad Prant, Surat dated 9.6.1992.

That being aggrieved and dissatisfied with the judgment and order dated 27.11.1992 passed by the Collector,Surat in RTS Appeal No. 145 of 1992, the petitioner preferred Revision Application before the Special Secretary (Appeals), Revenue Department, State of Gujarat, which was numbered as S.R.D. No. 14/1993 and the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad dismissed the said revision application confirming the order passed by the Collector, Surat dated 27.11.1992 and also the order passed by the Assistant Collector, Olpad Prant dated 9.6.1992 in cancelling the revenue entry No. 1193 dated 1.11.1989.

5. That being aggrieved and dissatisfied with the judgment and order dated 1.6.1993 passed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat in S.R.D. No. 14/1993 in dismissing the same and confirming the order passed by the Collector, Surat dated 27.11.1992 and also the order passed by the Assistant Collector, Olpad Prant, Surat dated 9.6.1992 in cancelling the mutation entry No. 1193 dated 1.11.1989 with regard to Block No. 123 situated at Village Vareth,Taluka Mandvi, the petitioner had preferred the present Special Civil Application under Article 227 of the Constitution of India.

6. It is contended on behalf of the petitioner that while cancelling the entry No. 1193 dated 1.11.1989 the Assistant Collector has held that there is a breach of provisions of Agricultural Land Ceiling Act and also there is a breach of Section 2(6) and Section 63 of the Bombay Tenancy Act. It is submitted on behalf of the petitioner that while exercising the powers under Rule 108(6) of Bombay Land Revenue Rules for deciding the question of mutation entry which are known as RTS proceedings the Assistant Collector was not justified in cancelling the entry on the ground that there is breach of provisions of other Act, i.e., Agricultural Land Ceiling Act and Bombay Tenancy Act. For that, the ld. advocate appearing for the petitioner has relied upon a judgment of this Court in the case of Evergreen Apartment Cooperative Housing Society Vs. Special Secretary, Revenue Department, Gujarat State, reported in 1991 (1) G.L.R. Page 113, in which it is specifically held in Para 12 that the revenue authorities, as mentioned in Rule 108 of the Rules cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the Entry are against the provisions of a particular enactment. It is also held in the said

judgment that the question whether the transaction is valid or not has to be examined by the competent authority under the particular enactment by following the procedure prescribed therein and by giving opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. The ld. advocate appearing for the petitioner has also relied upon a judgment of this Court in the case of Siddharth B. Shah and others vs. State of Gujarat, reported in 1999 (3) GLR Page 2527 with regard to proposition that entries made in the revenue records have primarily a fiscal value and they do not create title and revenue authorities cannot pass orders on an assumption under Rule 108 that a transaction recorded in the entries are against provisions.

7. On the other hand, learned Assistant Government Pleader, Shri Poojari appearing on behalf of the State Government has supported the judgment and order passed by all the authorities below. He has submitted that when it is found that there is a breach of provisions of the Agricultural Land Ceiling Act as well as Bombay Tenancy Act, the transaction itself was ab initio void and therefore the authority was justified in cancelling the entry.

8. I have heard the learned counsel on behalf of the parties. The Assistant Collector, while exercising the power under Rule 108(6) of the Bombay Land Revenue Rules has cancelled the entry on the ground that there is a breach of provisions of Agricultural Land Ceiling Act and that there is a breach of provisions of Section 2(6) and Section 63 of the Bombay Tenancy Act. At this stage, Shri Kharadi has also brought to the notice of the Court that even the notice for breach of the provisions of the Agricultural Land Ceiling Act has been withdrawn by the competent authority. Even otherwise, as held by this Court in the aforesaid two judgments, reported in 1991(1) GLR Page 113 (Para 12), and the judgment reported in 1999(3) GLR Page 2527 (Para 3), the Revenue authorities were not justified in cancelling the entry while exercising the powers under Rule 108 of the Rules on an assumption that the transactions recorded in the entry are against the provisions of a particular enactment. The entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the document of title or the orders passed by the competent authorities under special enactment. Independently,the revenue authorities as mentioned in Rule 108 of the Rules cannot pass orders of cancelling entries on an assumption that the

transactions recorded in the entries are against the provisions of a particular enactment. In the present case, as stated above the Assistant Collector, while exercising the suo motu powers under Rule 108 of the Rules has cancelled the said entry No.1193 only on the ground that there is a breach of provisions of Agricultural Lands Ceiling Act and that Section 2(6) and Section 63 of the Bombay Tenancy Act and as held in the aforesaid two judgments the Assistant Collector had fallen in error in cancelling the entry on the aforesaid ground and the revisional authority as well as the appellate authority had also erred in confirming the order passed by the Assistant Collector in cancelling the entry No. 1193 dated 1.11.1989. Under the circumstances, the judgment and order passed by all the authorities below in cancelling the entry No. 1193 dated 1.11.1989 are require to be quashed and set aside and are hereby quashed and set aside accordingly. The petition is allowed. Rule is made absolute accordingly with no order as to costs.

10. It is made clear, that this Court, while allowing the Special Civil Application, has not considered the validity of the transaction in question and the authorities are not precluded from taking appropriate action in accordance with law with regard to breach of Agricultural Lands Ceiling Act and/or Section 63 of the Bombay Tenancy and Agricultural Lands Act, and it will be open for them to take appropriate action in accordance with law.

rmr. [M.R. Shah, J.]